

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JOSEPH H. BROWN,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 05-3135-CV-S-ODS-H
JOSEPH E. GUNJA, Warden, ¹)	
)	
Respondent.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate Judge has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he continues to assert the allegations of his original petition. It is his position that respondent is violating his constitutional rights by using criminal history that is too old to calculate his custody classification.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed without prejudice. Petitioner has failed to establish that his

¹The name of the current warden at the Medical Center, Joseph E. Gunja, has been substituted for that of the former warden.

constitutional rights were violated. Rather, the law is clear that matters of prison classification are within the discretion of the Bureau of Prisons, and that an inmate has no constitutional right to a particular prison classification.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby,
CONSIDERED and OVERRULED. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis.
It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby,
dismissed without prejudice.

s/ Ortrie D. Smith
ORTRIE D. SMITH
United States District Judge

Date: November 17, 2006